

E-FILED: March 26, 2012

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

v.

MARGARITA TORRES; SHARON TULLEY,

Defendants.

No. C12-00188 HRL

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

**REPORT AND RECOMMENDATION RE
MOTION TO REMAND**

[Re: Docket Nos. 5, 6]

Sharon Tulley removed this unlawful detainer case from the Santa Clara County Superior Court. Plaintiff Federal Home Loan Mortgage Corporation moves to remand and requests that its motion be heard on shortened time. This court has not received any opposition to the motion, and the time for filing any opposition or response has passed. The matter is deemed suitable for determination without oral argument. The noticed April 3, 2012 hearing is vacated, and plaintiff's motion for an order shortening time is denied. Civ. L.R. 7-1(b). For the reasons stated below, the undersigned recommends that plaintiff's motion for remand be granted.

Removal to federal court is proper where the federal court would have original subject matter jurisdiction over the complaint. 28 U.S.C. § 1441. "If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court *shall*

1 make an order for summary remand.” 28 U.S.C. § 1446(c)(4) (emphasis added). These
2 removal statutes are strictly construed against removal and place the burden on the defendant to
3 demonstrate that removal was proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241,
4 1244 (9th Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

5 Tulley has failed to show that removal is proper based on any federal substantive law.
6 In her notice of removal, she asserts that plaintiff has violated federal law in pursuing the
7 unlawful detainer action. Federal courts have original jurisdiction over civil actions “arising
8 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim
9 “arises under” federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a
10 federal claim for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Defenses and
11 counterclaims asserting a federal question do not satisfy this requirement. Id. The record
12 indicates that plaintiff’s complaint presents claims arising only under state law and does not
13 allege any federal claims whatsoever. Defendants’ allegations in a removal notice or in a
14 response to plaintiff’s complaint cannot provide this court with federal question jurisdiction.

15 Defendant does not establish diversity jurisdiction. In any event, the complaint indicates
16 that the amount demanded does not exceed \$10,000. And, as a California defendant, Tulley
17 cannot remove this action to federal court under diversity jurisdiction. 28 U.S.C. § 1441(b)
18 (stating that an action is removable for diversity “only if none of the parties in interest properly
19 joined and served as defendants is a citizen of the State in which such action is brought”);
20 Spencer v. U.S. Dist. Ct., 393 F.3d 867, 870 (9th Cir. 2004) (“It is thus clear that the presence
21 of a local defendant at the time removal is sought bars removal.”).

22 Because not all parties have consented to the undersigned’s jurisdiction, this court
23 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned
24 further RECOMMENDS that the newly assigned judge grant plaintiff’s motion and remand the
25 case to Santa Clara County Superior Court. Pursuant to Federal Rule of Civil Procedure 72(b),
26 any party may serve and file objections to this Report and Recommendation within fourteen
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1 days after being served.

2 SO ORDERED.

3 Dated: March 26, 2012

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5 HOWARD E. LLOYD
6 UNITED STATES MAGISTRATE JUDGE
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United States District Court
For the Northern District of California

1 5:12-cv-00188-HRL Notice has been electronically mailed to:

2 Poonam Renee Belcastro rbelcastro@piteduncan.com

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4 5:12-cv-00188-HRL Notice sent by U.S. Mail to:

5 Sharon Tulley
6 3012 East Hills Drive
7 San Jose, CA 95127

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